

REMARKS

Claims 1-21 are pending in the instant application. The Examiner requires that Applicants elect one of the following groups of claims for prosecution:

1. Group I, claims 1-15 drawn to compositions comprising lamellar bodies; and
2. Group II, claims 16-21 drawn to methods of a) treating Otitis Media or b) performing endoscopic sinus surgery.

If Applicants choose to pursue the "method claims" of Group II, Applicants must also elect a species of either a) treating Otitis Media (claims 16-19) or b) performing endoscopic sinus surgery (claims 20-21).

Applicants hereby respond by electing Group I, claims 1-15 with traverse. Applicants respectfully request reconsideration of the Requirement for Restriction to allow prosecution of more than one group of claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

Applicants respectfully submit that the groups designated by the Examiner fail to define compositions and methods so distinct as to warrant separate Examination and Search. The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit that conjoint examination and inclusion of all of the claims of the present application would not present an undue burden on the Examiner, and accordingly, withdrawal of the Requirement for Restriction, is in order.

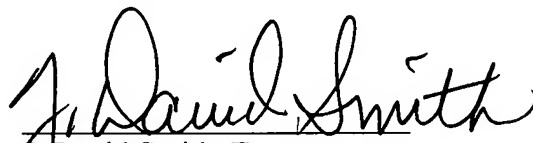
FEES

No additional fees are believed necessary in connection with the present submission; however, should this be in error, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment or to credit any overage.

CONCLUSION

It is believed that all of the claims are patentable and early notification as such is earnestly solicited. If any issues may be resolved by way of telephone, the Examiner is invited to call the undersigned at the telephone number indicated below.

Respectfully submitted,


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